IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21341 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI NATHABHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT THRO' JOINT SECRETARY & 3 - Respondent(s)

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Appearance :
MR YATIN SONI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2, 4,
MR PRAKASH K JANI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India the petitioner has challenged the legality and validity of the judgment and order passed

by the Joint Secretary (Revision), Panchayat Rural Housing and Rural Development Department, State of Gujarat dated 28-9-05 passed in Revision Application No.64/05.

2. The petitioner is in possession of three gunthas of Kharaba land at village Shili, Tal: Umreth, Dist: Anand and in the said land, there was a well and the well was given on lease and for the purpose of constructing small room near the well, the aforesaid 3 gunthas of lans was given to the petitioner. By the passage of time, the said well was not usable and the respondent – Panchayat passed an order against the petitioner and directed him to vacate the premises in question and the petitioner approached the State Government and the Joint Secretary, State of Gujarat by order dated 20-4-05 allowed the said appeal, which was filed at the instance of the petitioner and the petitioner was permitted to continue to use and enjoy the well and 3 gunthas of land surrounding the well on certain terms and condition. It appears that the Panchayat is of the opinion that the petitioner has constructed a bore well without obtaining prior permission from the Panchayat and therefore, the Panchayat preferred Special Civil Application No.11440 of 2005 and the said application

came to be allowed by the learned Single Judte of this court (Coram: Akil Kureshi, J) by its order dated 20-6-2005 and the matter was remanded to the State Government to consider the question of alleged unauthorised construction of the bore well. On remand, the Joint Secretary has passed the impugned order by directing the petitioner to remove the unauthorised bore well from the land in question as the same has been constructed by the petitioner without obtaining any prior permission from the Shili Gram Panchayat and it was also further directed that if the petitioner does not remove the same, then the Panchayat will remove the same. Being aggrieved by and dissatisfied with the aforesaid order passed by the Joint Secretary dated 28-9-05, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Yatin Soni, learned advocate appearing on behalf of the petitioner has vehemently submitted that there is no requirement of getting prior permission from the Panchayat and as such the petitioner has already applied with the Collector for granting necessary permission / approval for bore well and in the mean time if the bore well is removed, the petitioner will

be suffering a lot and his application would become infructuous.

4. On the other hand, Shri PK Jani, learned advocate appearing on behalf of the respondent – Panchayat has submitted that it was the case of the petitioner that the permission has been granted by the Panchayat to other persons and in view of the order passed by the learned Single Judge of this court in the aforesaid Special Civil Application, it is now not open for the petitioner to contend that the Panchayat has no jurisdiction. He has further submitted that in fact, the Panchayat is the Competent Authority to grant such permission. He has also further submitted that the alleged application submitted by the petitioner to the Collector, Anand is dated 10-10-05 i.e. after the impugned order passed by the State Government i.e. Joint Secretary and only with a view to see that the bore well is not removed, such an application is made by the petitioner. He has further submitted that as such the Collector has no jurisdiction and it is the Panchayat, which has got the jurisdiction to grant such permission. It is also further submitted that in fact by such illegal bore well, the petitioner is selling the water to other village people and is making profit,

which is not permissible and therefore, it is requested to dismiss the present Special Civil Application.

5. During the course of arguments, it was suggested by the court that in view of the fact that the petitioner has submitted an application before the Collector, Anand, instead of removing the bore well, let the bore well be used for all the village people and the management of the said bore well would be with the Gram Panchayat and let the Collector take appropriate decision after giving opportunity to the petitioner as well as the Shili Gram Panchayat. Shri Soni, learned advocate appearing on behalf of the petitioner has agreed to the same but has submitted that in that case, the Panchayat also should permit the petitioner to use the said water from the said bore well and the petitioner may not be removed from the land in question, which is leased to the petitioner. Shri PK Jani, learned advocate appearing on behalf of the respondent Panchayat has submitted that alongwith the village people, the petitioner will also be permitted to use the water and let the management be with the Panchayat and the keys of the room be handed over to the Panchayat. Shri Jani has also further submitted that the petitioner will not be removed from the land in question except in

accordance with law. At this stage, Shri Soni has submitted that the petitioner will hand over the possession and the keys of the room, which is near the bore well to the Panchayat within a period of two weeks from today.

6. Under the circumstances, while disposing of the present Special Civil Application, following order is passed

1. Collector, Anand is directed to decide and dispose of the application submitted by the petitioner dated 10-10-05 in accordance with law and on merits after giving an opportunity to the petitioner as well as the Panchayat as early as possible.

2. Petitioner is directed to hand over the possession of bore well as well as the key of the room to the Panchayat within a period of two weeks as stated hereinabove and only thereafter, Collector may take appropriate decision.

3. Collector is directed to take appropriate decision independently and may also consider the contention raised on behalf of the petitioner that Gram Panchayat has no jurisdiction to grant such permission and similarly the contention raised on behalf of the respondent Panchayat that it is the Panchayat, which has got the jurisdiction and even after considering the

same, it will be ultimately for the Collector to decide the said application considering the interest of the entire village people in accordance with law and on merits.

7. With the above observations and directions, the order passed by the Joint Secretary (Revision) is modified to the aforesaid extent and the petition is accordingly disposed of. Direct Service is permitted.

(M.R.SHAH,J)

Shekhar/-